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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,911	11/14/2001	J. Aaron Bly	65678-0042	4207
27210	7590	12/01/2008		
MACMILLAN, SOBANSKI & TODD, LLC			EXAMINER	
ONE MARITIME PLAZA - FIFTH FLOOR			FISCHER, ANDREW J	
720 WATER STREET				
TOLEDO, OH 43604			ART UNIT	PAPER NUMBER
			3621	
			MAIL DATE	DELIVERY MODE
			12/01/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: J. AARON BLY,  
DAVID T. SPIELDENNE,  
AARON ROTH, PATRICK O'BRIEN,  
ANDREW F. SUHY JR.,  
AND BRENT PARENT

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Application No. 09/990,911  
Technology Center 3600

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Mailed: December 1, 2008

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Before KRISTA ZELE *Deputy Chief Appeals Administrator*  
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 15, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

**EXAMINER'S ANSWER**  
**GROUND'S OF REJECTION TO BE REVIEWED UPON APPEAL**

A review of the file finds that the grounds of rejection to be reviewed on appeal of the claims as provided in the Examiner's Answer mailed

November 16, 2006 under the heading “Grounds of rejection to be Reviewed on Appeal” is either unclear or is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection to be reviewed on appeal as provided in the Examiner’s Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Furthermore, the examiner must provide a clear statement of whether examiner agrees or disagrees with the statement of grounds of rejection to be reviewed as set forth in the brief and an explanation of any disagreement. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 (8<sup>th</sup> ed. Rev. 6, Sept 2007) for details.

A review of the Examiner’s Answer finds that it is unclear what rejected claims are on appeal as compared to the Appeal Brief and/or the Examiner’s Answer does not clearly address differences between rejections set forth in the Examiner’s Answer and those addressed in the brief.

Specifically, it is unclear if the examiner has withdrawn the rejection of claims 1-23 under 35 USC 101 or if the examiner meant to maintain this grounds of rejection. Clarification is required.

**CONCLUSION**

Accordingly, it is **ORDERED** that the application be returned to the Examiner:

- 1) to vacate the Examiner's Answer mailed November 16, 2006;
- 2) to generate a new Examiner's Answer setting forth the correct Grounds of rejection to be reviewed on appeal and to correct other sections of the Answer as may be required; and
- 3) such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/dal

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